

REMARKS

Claims 1-11 are pending. Claims 6-11 are withdrawn as nonelected. Claim 2 is canceled. Claims 1-5 are rejected. New claim 12 is claim 1 with additional limitations of the concentration ranges for the essential oil, supported at least at Table 1 and Example 4 and thus introducing no new matter.

AMENDMENT TO SPECIFICATION

The specification is amended to clarify the chemical structure of formula I at ¶29. The published application shows part of the structure as "missing or illegible when filed". At least because the chemical name of the composition is disclosed, and its chemical structure is known to a person of ordinary skill in the art, the amendment does not introduce new matter. Applicants respectfully request that the amendment be entered.

CLAIM REJECTIONS UNDER 35 U.S.C. §102

Claims 1- 5 are rejected under 35 U.S.C. 102(e) as anticipated by Klopfenstein EP 0 354 027. Amended claim 1 recites a microemulsion. A microemulsion is a dispersion that may be either oil-in-water, or water-in-oil (p. 5 lines 14-16 of Applicant's specification). Hence, the claimed solvent is aqueous.

In contrast, Klopfenstein's solvent is NMP and at least 80% by weight of a mixture of cyclic terpenes. Hence, Klopfenstein's solvent is nonaqueous.

For at least this reason, Klopfenstein does not anticipate claims 1-5.

Because Klopfenstein does not teach the claimed dipolar microemulsion solvent, Applicants assert the rejections of claims 1-5 are overcome and request their withdrawal.

CLAIM REJECTIONS UNDER 35 U.S.C. §103

Claims 1-5 are rejected under 35 U.S.C. 103(a) as obvious over Klopfenstein.

Applicants disagree that Klopfenstein renders the claimed solvent obvious. In determining obviousness, factors to be evaluated include "the scope and content of the prior art...differences between the prior art and claims at issue...and the level of ordinary skill in the pertinent art." *Graham v. John Deere Co.*, 383 U.S. 1 (1966). A finding of obviousness must be based on more than "mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." *KSR Int'l. v. Teleflex Inc.*, 127 S. Ct. 1727, 1741 (2007) *quoting In re Kahn*, 441 F.3d 977, 988 (Fed. Cir. 2006).

Klopfenstein is directed to the use of certain non-toxic chemicals as cleaning solutions in manufacturing applications. Specifically, Klopfenstein's solvent acts as a short-term cleaning agent to remove unwanted substances from materials in a variety of manufacturing applications. A person of ordinary skill in Applicants' art would not consider Klopfenstein relevant to solving the problem of generating solvents that extend the stability over time of chromogenic substrates used in biological assays; Klopfenstein's solvents are directed to disposal of dissolved substances. Klopfenstein therefore is nonanalogous art, and does not render the claimed solvent obvious.

Klopfenstein teaches a solvent that contains at least 80% cyclic terpenes. A person of ordinary skill in Applicants' art would not be motivated to use Klopfenstein's cleaning solvent, at least because s/he would know that the use of Klopfenstein's high concentrations of cyclic terpene in Applicants' solvent, for a chromogenic substrate for detecting presence of a lacZ gene and/or lacZ gene activity, would render Applicants' solvent inoperable for its intended purpose, as explained in the attached Declaration under 37 C.F.R. §1.132. Specifically, the Declaration states that 80% cyclic terpenes in a solvent would result in large pores/holes to form in the capsid walls of bacteria used in the biological assay, thus killing the bacteria in which activity is to be detected.

For at least these reasons, Applicants respectfully assert the obviousness rejections of claims 1-5 are overcome and request their withdrawal.

CONCLUSION

The application is believed to be in complete condition for allowance. No fees are believed due but, if deemed necessary, the Office is authorized to charge them to Deposit Account 20-0809.

The Examiner is invited to contact Applicants' undersigned representative with questions.

Respectfully submitted,

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